

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

BLUE SPIKE, LLC,

*Plaintiff,*

V.

AUDIBLE MAGIC CORPORATION,

*Defendant.*

AUDIBLE MAGIC CORPORATION,

*Counterclaim Plaintiff*

V.

BLUE SPIKE, LLC, BLUE SPIKE, INC.  
and SCOTT A. MOSKOWITZ

*Counterclaim Defendants.*

Case No. 6:15-cv-584-MHS

## Jury Trial Demanded

**DECLARATION OF GABRIEL RAMSEY IN SUPPORT OF  
AUDIBLE MAGIC'S MOTIONS IN LIMINE**

I, Gabriel Ramsey, declare under penalty of perjury that the following is true and correct:

1. I am a partner at the law firm Orrick, Herrington & Sutcliffe, LLP (“Orrick”), counsel of record for defendants Audible Magic Corp. (“Audible Magic”) and a number of its customers accused as defendants in this case on the basis of Audible Magic’s technology. I have personal knowledge of the facts set forth in this declaration, or access to information and records allowing me to confirm these facts. If called as a witness, I could testify competently to these facts under oath.

2. Attached as Exhibit 1 to my declaration is a true and correct copy of excerpts of Audible Magic's First Supplemental Response to Blue Spike's Interrogatory No. 18.

3. Attached as Exhibit 2 to my declaration is a true and correct copy of



excerpts of Audible Magic's invalidity contention charts regarding the AIR DataBlade technology.

4. Attached as Exhibit 3 to my declaration is a true and correct copy of excerpts of Audible Magic's invalidity contention charts regarding the SoundFisher technology.

5. Attached as Exhibit 4 to my declaration is a true and correct copy of excerpts of the expert report of Dr. Quackenbush.

6. Attached as Exhibit 5 to my declaration is a true and correct copy of excerpts of the expert report of Dr. Papakonstantinou.

7. During pretrial proceedings in the fall of 2015, when trial was scheduled for November 2015, the parties exchanged materials and met and conferred regarding what portions of the same Section 102(f) theories would be considered by the jury and which considerations were for the Court.

8. At 9:33 am on September 25, 2015, Blue Spike's counsel exchanged a draft of the pretrial order, which laid out Audible Magic theories and listed Blue Spike's planned motions *in limine*, in anticipation of a meet and confer that day. Attached as Exhibit 6 to my declaration is a true and correct copy of the email and draft pretrial order received from Blue Spike's counsel.

9. At 10:00 am that day, the parties discussed pretrial matters, and Blue Spike did not contest Audible Magic's proposed procedural course with respect to Audible Magic's Section 102(f) claim and correction of inventorship. Attached as Exhibit 7 to my declaration is a true and correct copy of the calendar entry for that meet and confer teleconference.

10. Attached as Exhibit 8 to my declaration is a true and correct copy of the Court's November 23, 2010 order in *Illumina, Inc. v. Affymetrics, Inc.*, 09-cv-277-bbc, 09-cv-665-bbc (W.D. Wis. November 23, 2010, Crabb, J.)

11. Attached as Exhibit 9 to my declaration is a true and correct copy of the



expert report of Alan Ratliff.

12. During a meet and confer on June 17, 2016, I communicated to counsel for Blue Spike that, at trial, Audible Magic would agree not to use the term patent “troll” or similar arguably pejorative terms. I explained that Audible Magic reserved the right to assert, accurately, that Blue Spike LLC was a non-practicing entity that produces no products of any type, and to assert that Blue Spike LLC, Blue Spike Inc. and Scott A. Moskowitz were “non-practicing” in that they have admitted that they never built the technology of the patents-in-suit. Blue Spike would not agree to this compromise.

13. Attached as Exhibit 10 to my declaration is a true and correct copy of an email sent by counsel for Audible Magic to Blue Spike’s counsel requesting that they withdraw their Motion in Limine No. 1.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct based on my own personal knowledge.

Executed on June 23, 2016 in New York, New York.

A handwritten signature in black ink, appearing to read "Gabriel Ramsey", written over a horizontal line.

Gabriel Ramsey